



## **Baldwin Park Operable Unit**

**Don Vanderkar - Co-Chairperson**

**Steve Richtel - Co-Chairperson**

---

13 May 1998

Bob Klotz, Lewis Maldonado, and Wayne Praskins  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Dear Gentlemen:

In preparation for the June 5, 1998 meeting with EPA management, the BPOU Steering Committee believes it to be worthwhile to review some of the history and outstanding issues which have lead up to the current break in our seven years of successful cooperation. Our concern is that if the Good Faith Offer date is not extended, this Operable Unit will depart from its long established history of significant, positive results, collaberative efforts and good-will and descend to the type of conflict so prevalent in Superfund history.

### The History of PRP/EPA Cooperation

The Baldwin Park Operable Unit (BPOU) is an unusual combination of a Superfund Site, a major drinking water aquifer, and a groundwater storage basin. Water rights have all been allocated and remain under the jurisdiction of the Court. As a result, a myriad of parties have an interest in any project which will impact the Basin, and any major activity involving extraction of groundwater necessarily impinges on interests that are local, state, and national.

Indicative of these interests were EPA negotiations with the Metropolitan Water District of Southern California (MWD) which took place prior to issuance of the Proposed Plan in 1993, and which combined cleanup with a major conjunctive use project. Although that effort did not come to fruition, the conjunctive use process was revived after issuance of the BPOU ROD and received Congressional blessing.

The national scope of San Gabriel Basin interests was established with Congressional legislation in 1992 for the San Gabriel Demonstration Project which has provided the United States Bureau of Reclamation funding for 25% of the capital cost of a cleanup/conjunctive use project. Pursuant to that funding, Congress has paid a portion of the cost for the development of the Consensus Plan begun by the Water Quality Authority and implemented by the BPOU PRPs, Three-Valleys Municipal Water District and MWD. It has also financed the State Environmental Report on the Consensus Plan. In total, USBR has expended well in excess of one million dollars.

In accord with the wish of Congress and many of the interested parties in the San Gabriel Basin, the EPA postponed the issuance of Special Notice letters pending the negotiation of the Consensus Plan. When Special Notice was finally issued in May 1997, the date was selected so that the negotiation of a Consent Decree would take place at the same time as final governing board review and execution of contracts to implement the Consensus Plan took place.

Although this delay may seem significant, there were many time saving aspects to the extensive cooperation between the PRPs and EPA. The primary one was that there were none of the normal delays that attend the more formal use of the regulatory process and EPA orders that may have otherwise been required. By our calculation, we are ahead of where we probably would have been had Special Notice been issued earlier in the normal course.

This history establishes what the parties, including Congress, have all known: The BPOU is not a Superfund Site in isolation. It is primarily a drinking water basin with the ultimate priority being the highest and best use of a drinking water resource.

### The Discovery of Perchlorate

As fate would have it, within days of the issuance of Special Notice, perchlorate was found in the BPOU roughly coextensive with the VOC plumes and in concentrations several times the provisional action level for perchlorate. This discovery derailed the Consensus Plan and the Special Notice schedule primarily for two reasons. 1) Since perchlorate moves with the speed of groundwater (VOC movement is retarded by chemical and physical factors), the full downgradient extent of the plume was not known, putting the existing extraction plan in question. 2) There was no known method of treatment to remove perchlorate to below the Department of Health Services' (DHS) provisional action level and there were significant studies underway which are intended to lead to a final perchlorate RfD by late 1998.

The discovery of perchlorate in the BPOU was followed by the discovery of perchlorate nationally in a number of other site including, the Jet Propulsion Lab in Pasadena, California, Las Vegas, Nevada and Magna, Utah. Las Vegas was especially serious since perchlorate had migrated into Lake Mead and has resulted in the delivery of perchlorate contaminated water in

the range of 5 to 7 ppb throughout Southern California via the MWD delivery of Colorado River water. Because of the lack of known treatability, Congress has appropriated \$2 million dollars to be used by the American Water Works Association Research Foundation for treatability studies, a process that will take several years.

The other side of fate's coin was the work of Aerojet in Sacramento on biological treatment for perchlorate. Because of the history of cooperation and good will between the BPOU PRPs and EPA, and the prior effort by Aerojet, the BPOU Steering Committee once again made a voluntary cooperative agreement with EPA to push immediately into a small scale and then commercial scale treatability studies for the biological treatment of perchlorate. At the same time, the Steering Committee implemented, with the help of 25% USBR funding, the phased implementation of four additional multiport monitoring wells to identify the extent of the perchlorate plume. Phase #1 of the treatability studies has proven a major success with potential to scale up to a Phase #2 commercial plant which will be placed at the well head of La Puente County Water District, and which will be owned by Three-Valleys with 25% USBR financing. Agreements are almost in place for that plant.

In effect, the BPOU Steering Committee has been conducting a perchlorate RI/FS under the guise of Special Notice on a now obsolete "VOC" ROD. We have been prepared to do this because we believe it is in our own, and everyone else's, interest that the BPOU project be completed at the earliest possible moment without the normal delays of the NCP process. We have expressed in writing our agreement to work with EPA on amending the ROD so that we will end up on a proper regulatory track at the completion of treatability studies and a new extraction plan. We have further agreed to immediately implement the remedy upon our execution of the CD, assuming no meaningful outside opposition to it. In effect, because of the prior work of Aerojet and the cooperative relationship with EPA, we have probably cut two years off of the regulatory process and will set a precedent on perchlorate remediation. At the same time, we will hopefully obtain early DHS approval for the use of perchlorate treated water as drinking water.

But, rather than receiving EPA approval and encouragement, we are now being penalized because our project is now "late" on the obsolete "VOC" ROD timetable. However, that timetable is dead and gone. We are now on a new perchlorate timetable that started with the compound's discovery in the BPOU in late May 1997. We have laid out that timetable in great detail relying on the expertise of Malcolm Pirnie and the work we have already done. On that timetable, we are literally years ahead of schedule and should set a national example on effective and timely remediation.

If pressed by unrealistic EPA demands and its return to regulatory orders, we will fall back on the regulatory process, even though it is against our interest. What has been a national model for cooperation will become the typical high transaction cost, combative and time consuming

Superfund process that takes literally years to complete. Why, possibly, would any of us want to go that route?

We have three basic requests: 1) that EPA recognize and adopt the schedule we have laid out to reach final formulation of the project, including a proven perchlorate treatment train, and negotiation of a Consent Decree; 2) that EPA not interfere with the revival of the Consensus Plan; and 3) that EPA pursue well identified and proven perchlorate PRPs.

### Schedule

The Malcolm Pirnie schedule submitted to EPA in March 1998 is identical in concept to the VOC schedule which EPA approved and followed with respect to the "VOC" ROD. What was not "too long" under that ROD has now become unacceptable simply because of the now irrelevant history prior to discovery of perchlorate. Unfortunately, science cannot be dictated or rushed, new treatment trains cannot be adopted "in design" under the rigid schedules of a Consent Decree, and major public agencies such as DHS, MWD, Three-Valleys, the Watermaster cannot be hurried into decisions which affect vital groundwater and drinking water policies and considerations. When dealing with a new chemical contaminant, these agencies must be given the time to apply to the final remedy the necessary safety and reliability tests for public drinking water, rather than have EPA force the selection of the first treatment train that can meet MCLs. At this point, the drinking water aspects are paramount and EPA must provide adequate time to obtain the necessary institutional and permit clearances for the treated water to be used as a public drinking water source.

### Re-activation of the Consensus Plan

We have every belief that the Consensus Plan will be re-activated. Two major changes have taken place as a result of the discovery of perchlorate, both of which favor the project. First, the biological treatment of perchlorate also removes nitrates to non-detect. Nitrate was a major issue a year ago since the project water had higher nitrate concentrations than MWD water. We now anticipate matching MWD water on that parameter. Second, MWD is currently delivering water with concentrations of perchlorate that are greater than the concentrations of perchlorate in water we would deliver to the Middle Feeder. Our water would help to dilute these concentrations. Our water would also be better than MWD water on some other water quality issues such as TDS and disinfection by-products.

We are dealing, however, in a very political area. There are those in the local water community who do not want MWD involved in a conjunctive use project in the Basin and will use any excuse to undermine its success. MWD and Three-Valleys themselves are responsive to their customer interests and any criticism of their proceeding with this project. In this fish bowl atmosphere, the BPOU Steering Committee cannot, and will not, undermine their own

negotiations by opening a contingent set of negotiations for some other remedy with parties who will know we are not serious. True negotiations take both time and resources and there is no incentive for the local purveyors to make that expenditure and bargain seriously for a contingency. We risk ending up with no party willing to negotiate with us.

We would also be dealing in bad faith with the USBR and Congress which have provided past and current funding for a conjunctive use project only.

EPA has threatened to open up negotiations on its own for an alternative project for disposal of project water. Any such attempt would produce one inch headlines in the local press and would signal EPA's abandonment of faith in the Consensus Plan no matter how EPA might try to qualify it. With EPA working against us, and the history of cooperation destroyed, MWD and Three-Valleys would be put in an uncomfortable political situation that could kill four years of work. And to what avail? The EPA cannot negotiate a PRP agreement with third parties. It cannot produce a new CEQA Environmental Impact Report for the alternative project. It can only destroy what currently exists and undermine a Congressional program aimed at improving a drinking water resource.

#### Perchlorate PRPs

EPA's initial task in any Superfund Site is the identification of PRPs to help finance the cleanup. In the case of perchlorate, that task started in May 1997. It identified Aerojet based on existing information Aerojet had already provided, and then took no further action. It so happens that during the Second World War, immediately adjacent to the Aerojet Azusa site, Day & Night Manufacturing Company was using massive quantities of potassium and ammonium perchlorate to produce flares and photoflash bombs for Army Ordnance. We have provided information from the National Archives which establish that Army Ordnance had inspectors on the Day & Night site who dictated the disposal practices for waste perchlorate at Day & Night in accord with the Safety Manual of Army Ordnance for handling such waste. This included the mandatory burning of waste perchlorate in the Kincaid Pit immediately north of the site and the washing down of facilities to remove perchlorate powder which is highly explosive. All this water went to ground since there were no sewers at the time. We have submitted consulting reports from other EPA and State sites which establish that perchlorate burn areas produce groundwater plumes. All of this evidence has been ignored by EPA with no meaningful explanation.

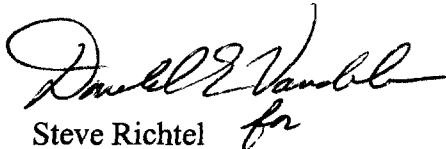
Day & Night was acquired by Dresser Industries, a multi-billion dollar company, while it was still producing perchlorate products. Its assets were eventually acquired by what is now United Technologies, another billion dollar company. Unless EPA supports the proposition that Superfund liability can vanish in thin air, one or both of those companies must be liable for the Day & Night disposal, not to mention the documented involvement of the War Department. And

yet EPA has taken no action. It is very discouraging for PRPs who have been cooperating to the greatest extent possible to find that the Agency not only wants them to give up all rights against other potential PRPs but also will not follow up irrefutable evidence against others.

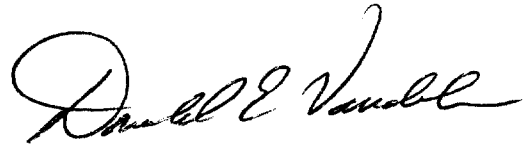
Summary

We believe that our requests are reasonable. We want to continue the productive track that we have been following in cooperation with EPA over the last seven years. Obviously, we are even less happy with the current situation than EPA in light of the financial impacts of what has happened, but we believe that the course we have set out will lead to the earliest remediation of the basin and the use of the basin for conjunctive use in accord with Congressional interests and the further development of necessary water resources for Southern California.

Very truly yours

A handwritten signature in cursive script, appearing to read "Steve Richtel".

Steve Richtel  
Co-chair

A handwritten signature in cursive script, appearing to read "Donald E. Vanderkar".

Donald E. Vanderkar  
Co-chair

cc: F Marcus, EPA  
K Takata, EPA